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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 585.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, ET AL., *Petitioners*,

vs.

AMERICAN BOND & MORTGAGE COMPANY, *Respondent*, (Appellee below)

No. 586.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, ET AL., *Petitioners*,

vs.

AMERICAN BOND & MORTGAGE COMPANY, *Respondent*, (Appellee below)

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER TO PETITION FOR INJUNCTION.

WILLIAM E. LEAHY,
EDMUND M. TOLAND,
WILLIAM J. HUGHES, JR.,
Attorneys for American Bond & Mortgage Company, Bankrupt.

KIRKLAND, FLEMING, GREEN and MARTIN,
DEFREES, BUCKINGHAM, JONES and HOFFMAN,
Attorneys for Chicago Title & Trust Company and Arthur W. Draper, Receivers of American Bond & Mortgage Company.

A. L. SHAPIRO,
BERNARD C. SCHIFF,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

Nos. 585 and 586.

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCIS C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN AND NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY, *Respondent,*
(Appellee below)

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER TO PETITION FOR INJUNCTION.

Now come American Bond and Mortgage Company, Bankrupt, by William E. Leahy, Edmund M. Toland and William J. Hughes, Jr., its attorneys, and Chicago Title and Trust Company and Arthur W. Draper, Receivers of American Bond and Mortgage Company, by Kirkland, Fleming, Green and Martin and Defrees, Buckingham, Jones and Hoffman, their attorneys, and in response to the Petition for Injunction filed herein by Royal Indemnity Com-

pany, *et al.*, on March 9, 1933, respectfully show to the Court in opposition thereto, that:

1. Although American Bond and Mortgage Company was adjudicated Bankrupt in the United States District Court, Northern District of Illinois, Eastern Division, on September 5, 1931, and in the United States District Court, District of Maine, on October 14, 1931, still no progress in administration has been had because of the tactics of petitioners. There is no Trustee and no Receiver in Bankruptcy. The properties still remain in the hands of respondent Receivers appointed in an Equity case *prior* to adjudication of bankruptcy.

2. On September 5, 1931, the Equity Receivers reported to the United States District Court, Northern District of Illinois, Eastern Division, that their examination into the affairs of the company had convinced them that the company was bankrupt and should be administered in the bankruptcy court. But as yet, through no fault of theirs, they have not been relieved of their responsibility to protect and preserve the company's assets. They are anxious to turn the assets over to the bankruptcy court.

3. It appears from the receivers' petition annexed as Exhibit "A" to the petition for injunction herein that the asset "President Monroe Building, New York City" may be lost to the Estate by foreclosure unless reorganization is effected. The receivers could not stand idle and allow the Estate's equity to be wiped out by foreclosure. Accordingly, they presented the dilemma to the Chancellor and prayed for an order in the alternative after giving notice to all parties. Bankruptcy receivers or trustees could protect the Estate, whereas, equity receivers are more or less powerless in view of bankruptcy adjudication.

Petitioners opposed the Receivers' petition for protection of the "President Monroe" asset (see Exhibit "A" to the Petition for Injunction filed herein). They were given five days to answer the petition in the District Court. In-

stead of answering, they moved in this Court for an injunction as in an original proceeding. At the same time they stated, Petition, page 8:

> "19. That the Equity Receivers are threatening to proceed with their said application though the same has been temporarily adjourned."

Their own statement negatives any fancied right to an injunction. No harm could come if the District Court did appoint Receivers in Bankruptcy to protect the asset.

Something must be done. What else could the Equity Receivers do but call the Court's attention to the need of protection? We submit the application for an injunction here is without color of merit and should be denied.

The petition for *injunction* is not fair. The reason the involuntary petition mentioned in paragraph 6, page 6, of the petition for injunction has not been brought to trial is because petitioners themselves secured a "stay order" under General Order No. 6 awaiting decision of the District Court of Maine as to whether or not it would transfer the case there to Illinois for administration. Since the adjudications in bankruptcy the Receivers have held the properties, protecting and conserving them, awaiting the appointment of some one to whom they could deliver the estate for distribution.

Petitioners are not altogether frank with Court or counsel. We refer to paragraph 10 of the petition. The reason the meeting was not held was because of petitioners' motion to vacate the adjudication and dismiss the petition and subsequent appeal from the adverse order. The same observation is true as to paragraph 13 of the petition. The petitioners themselves secured a "stay" of the involuntary petition upon their own motion under General Order No. 6 and may not now argue that because nothing thereafter was done therein (the stay order being obeyed) the petition was "abandoned". We refer the Court to the opin-

ion of Judge Peters of the Maine District Court where the same ledgerdemain was attempted. See *In re American Bond & Mortgage Company*, 58 F. (2d) 379, at page 383, where Judge Peters said:

> "The language of counsel is well adapted to the facts in the Acme Harvester Case, but is not an apt characterization of the situation disclosed in Chicago. The District Court there, instead of denying adjudication, 'practically' or otherwise, on September 5, 1931, denied the motion, made by the objecting creditors here, to dismiss the petition, and ordered further proceedings stayed until hearing could be held in this district, the domicile of the bankrupt, on petition filed here. The record, instead of showing an intention to abandon the proceedings, shows an intention on the part of the court to preserve the status quo until the first hearing could be had in the court of domicile as required by General Order VI and until a determination of the question of transfer. The record does not permit a finding that the Chicago proceedings referred to have been abandoned. On the contrary, I hold, as I would be obliged to find and hold, to order a transfer, that there is a pending petition in the Eastern Division of the District Court for the Northern District of Illinois to which the case pending in Maine can be transferred."

The petitioners could move in the District Court for a restraining order if they conceived a right thereto. But that they did not do. They ask this Court to sit as a trial Court—not to exercise appellate jurisdiction.

The present application for an injunction is typical of the moves resorted to by petitioners since September 5, 1931, that have interfered with the proper and orderly administration of this bankrupt's estate. For history of

this litigation we refer the Court to the statement thereof printed as an appendix to this answer.

Respondents respectfully submit that the prayer of the petitioners should be denied.

Respectfully submitted,

WILLIAM E. LEAHY,
EDMUND M. TOLAND,
WILLIAM J. HUGHES, JR.,
Attorneys for American Bond & Mortgage Company, Bankrupt.

KIRKLAND, FLEMING, GREEN and MARTIN,
DEFREES, BUCKINGHAM, JONES and HOFFMAN,
Attorneys for Chicago Title & Trust Company and Arthur W. Draper, Receivers of American Bond & Mortgage Company.

A. L. SHAPIRO,
BERNARD C. SCHIFF,
Of Counsel.

District of Columbia, ss:

EDMUND M. TOLAND, being duly sworn on oath deposes and says that he is one of the attorneys for the respondent American Bond & Mortgage Company. That the foregoing answer is true to the best knowledge, information and belief of deponent. Deponent further says that he is a member of the Bar of the District of Columbia residing in the City of Washington, District of Columbia, and the reason why this verification is made by deponent and not by respondents is that said respondents are not within the City of Washington, District of Columbia, where deponent has his office.

EDMUND M. TOLAND.

Subscribed and sworn to before me this 13th day of March, 1933.

LEILA M. HODGES,
(Seal) *Notary Public, D. C.*

My commission expires September 17, 1934.

APPENDIX.

Chronological Statement of American Bond & Mortgage Company Corporate Litigation.

On May 21, 1931, a bill was filed for the appointment of Receivers in Equity for American Bond & Mortgage Company in the United States District Court, Northern District of Illinois, Eastern Division (Rec. 35). The bill alleged solvency but present distress (Rec. 38).

According to the Clerk's file mark an involuntary petition in bankruptcy was filed in the same court at the same time (Rec. 217).

The next day the company appeared in the Equity suit, consented to the appointment of Receivers, and Receivers were thereupon appointed (Rec. 47-51).

The Company answered the involuntary petition denying insolvency or acts of bankruptcy (Rec. 206).

Four (4) days later (May 25, 1931) present counsel for Royal Indemnity Company et al. filed an involuntary petition in bankruptcy against the company in the United States District Court, District of Maine. The company filed its answer in that court, denying insolvency and acts of bankruptcy (Rec. 130) and motion was made by the company to transfer the cause to the United States District Court, Northern District of Illinois, Eastern Division (Rec. 132). This motion was opposed (Rec. 135-161).

Thereupon counsel for Royal Indemnity Company et al. appeared in the United States District Court, Northern District of Illinois and moved:

First: To dismiss the involuntary petition in bankruptcy for alleged defects therein.

Second: To stay all proceedings therein under General Order No. 6 until determination of the involuntary petition in Maine (Rec. 8, also 17).

The Illinois District Court denied the motion to dismiss the involuntary petition but allowed appellants' motion to

"stay" all proceedings until the hearing in the Maine District Court (Rec. 17).

On September 5, 1931, American Bond and Mortgage Company withdrew its answers to the involuntary petitions in Illinois and Maine (thus ceasing to contest adjudication) and also filed its voluntary petition in the Illinois District Court (which is the case now under review here) and upon which adjudication was then had.

On September 10, 1931, Appellants petitioned the Illinois District Court to vacate the order of adjudication upon the voluntary petition and "stay" all proceedings awaiting action in Maine under General Order No. 6.

Then in March, 1932, a hearing was had in the Maine District Court before Judge Peters to determine (in strict compliance with General Order No. 6) whether the administration should be had in Maine where the company had a charter only or in Illinois where it had its principal place of business for many years. The hearing resulted in an order by the Maine District Court that the interests of all concerned required the administration to be had in Illinois. See *In re American Bond & Mortgage Company,* 58 Fed. (2d) 379.

Counsel then appealed from the *order of transfer* to the First Circuit Court of Appeals where that phase of the case is now under advisement.

Following the order of transfer entered in Maine the Seventh Circuit Court of Appeals upheld the adjudication in the voluntary case.

The involuntary case in the Illinois District is pending, has not been abandoned, but is "stayed" upon Appellants' motion under General Order No. 6, awaiting final determination in the First Circuit of Judge Peters' order of transfer.